IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2703 OF 2006

Sou. Gayatri Arun Chipade ...Petitioner

V/s.

Hemant Wamanrao Kulkarni & Anr. ...Respondents

Mr.Narendra V. Bandiwadekar for Petitioner.
Mr.Satyajeet Mirajkar for Respondent No.1.
Mrs.M.M. Deshmukh, APP for the State.

CORAM : V.M. KANADE, J.
DATED : 4th OCTOBER, 2007.

P.C:-

1. Heard learned counsel for the Petitioner and learned counsel for the Respondent No.1.

2. Petitioner is challenging the judgment and order passed by the learned II Ad-hoc Additional Sessions Judge, Kolhapur in Criminal Appeal No.5 of 2006 dated 30/09/2006, whereby the Sessions Court was pleased to reduce the sentence awarded by the Trial Court from one year to 15 days. The Petitioner is also aggrieved by the fact that the Appellate Court has not directed the Respondent No.1 to pay compensation of Rs.1,70,000/- as was directed by the Trial Court.

3. Brief facts are that the Petitioner filed a complaint against the Respondent No.1 U/s.138 of N.I. Act. The Respondent No.1 had issued a cheque to the Petitioner for repayment of loan of Rs.1,70,000/- which was due and payable by him. However, cheque, after it was deposited, was dishonoured. The Petitioner sent statutory notice and, thereafter, filed said complaint. On 27/12/2004, the Trial Court held that the Respondent had committed an offence punishable U/s.138 of N.I. Act and sentenced him to suffer S.I. for one year and fine of Rs.2000/- in default to suffer four months S.I. The Trial Court also held him guilty for the offence punishable U/s.420 of IPC and sentenced him to suffer S.I. for one year and fine of Rs.2000/- in default to suffer four months S.I. The learned Magistrate also directed the Respondent to pay Rs.1,70,000/- within one month. Being aggrieved by the said order, the Respondent No.1 preferred appeal and Sessions Court passed the impugned order and set aside conviction U/s.420 of IPC and conviction U/s.138 of N.I.Act was upheld and sentence was reduced to 15 days and the Court did not pass any order regarding payment of compensation.

4. Learned counsel for the Petitioner submitted that the Appellate Court after having held that the compensation equivalent to the sum involved in the transaction has been awarded, however, in the operative part of the order, the Sessions Court did not pass any order regarding payment of compensation. He invited my attention to the operative part of the order. Sessions Court clearly erred in reducing the sentence from one year to 15 days.

5. Learned counsel for the Respondent No.1 submitted that there was no infirmity in the order passed by the Sessions Court and it was not necessary to interfere with the order passed by the Sessions Court.

6. In the present case, while granting rule, interim relief in terms of prayer clause(e) was granted on 4th September, 2007 directing the Respondent No.1 to deposit Rs.1,70,000/- in this Court towards compensation. In spite of this order being passed, the Respondent No.1 has not deposited said amount. It is, therefore, clarified that the order passed by the Sessions Court is modified and the Respondent No.1 is directed to deposit the amount of Rs.1,70,000/- in the Trial Court within eight

weeks with liberty to the Petitioner to withdraw said amount. In my view, Sessions Court has clearly erred in reducing the sentence awarded by the Trial Court on the ground that if the Respondent is kept in jail for one year, it would adversely affect the State Exchequer. In my view, observation made by the Sessions Court is, to say the least, unwarranted. No adequate reasons have been given to reduce the sentence from one year to 15 days. Conduct of the Respondent No.1 also disclosed that there was no reason to reduce the sentence. However, though interim order was passed by this Court, said compensation has not been deposited. Hence, order of the Sessions Court reducing the sentence from one year to 15 days is modified and the order passed by the Trial Court is confirmed. Writ Petition is allowed in the above terms.

. Writ Petition is disposed of accordingly.

V.M. KANADE, J.